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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,273	02/19/2004	William L. Grilliot	MOR3334P0991US	4238
32116	7590	01/04/2005	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/782,273	Applicant(s) GRILLIOT ET AL. <i>CH</i>	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is in response to amendment sent 10/27/04. Claims 1, 3-5, 9 and 11-13 have been amended. A terminal disclaimer has been received to overcome the double patenting rejection over US patent 6,728,970 from office action of 10/08/04. Claims 1-16 have been finally rejected below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6-8 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear in claims 6 and 14 what the National Fire Protection Association (NFPA) Standards are. They are not defined in the specification and they are capable of changing over time so a definition of the particular standards is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldridge (US 5,933,865).

Art Unit: 3765

In regard to claim 1, Aldridge provides a protective garment (10) for protecting a military or paramilitary firefighter or emergency worker (column 1, lines 32-64). The protective garment of Aldridge is a coat (10). The protective garment (10) is capable of being reversible and has a shell of high visibility (16) and a shell of low visibility (inside of 14) depending upon what color the reverse is and what situation you are in. The garment (10) is wearable with either shell facing outwardly and the shell of high visibility has portions of reflective material (30) that faces outwardly when the protective garment is worn so that the shell of high visibility faces outwardly.

The garment of Aldridge is capable of being worn in a tactical situation in which a need for low visibility overrides a need for high visibility develops or is expected to develop. The military or paramilitary firefighter or emergency worker wearing the protective garment with the shell of high visibility facing outwardly may have an opportunity to doff the protective garment, to reverse the protective garment, and to redon the protective garment with the shell of low visibility facing outwardly.

In regard to claim 2, Aldridge teaches portions are provided by reflective trim affixed to the shell of high visibility (30).

In regard to claims 3 and 10, Aldridge teaches a garment for protecting a firefighter as described above in this office action (see claim 1). The garment of Aldridge is capable of being used in the method of claims 3 and 10, since the structural limitations of the garment used in the method are provided by Aldridge and therefore it is capable of being used in the method as described.

Art Unit: 3765

However, with regard to the shell of low visibility appearing dark in ambient light, Aldridge teaches a liner that is capable of being worn as the outside surface and the appearance of the shell depends upon the degree of ambient light provided. Any color can appear dark when the lighting is low and only silhouettes are visible. Therefore, the inside of the liner worn as the outside surface is capable of appearing dark when in ambient light.

In regard to claims 4 and 12, Aldridge teaches a garment for protecting a firefighter as described above in this office action (see claim 1). The garment of Aldridge is capable of being used in the method of claims 4 and 12, since the structural limitations of the garment used in the method are provided by Aldridge and therefore it is capable of being used in the method as described.

However, with regard to the shell of low visibility appearing dark in ambient light, Aldridge teaches a liner that is capable of being worn as the outside surface and the appearance of the shell depends upon the degree of ambient light provided. Any color can appear black when the lighting is low and only silhouettes are visible. Therefore, the inside of the liner worn as the outside surface is capable of appearing black when in ambient light.

In regard to claim 5 and 13, Aldridge teaches a garment for protecting a firefighter as described above in this office action (see claim 1). The garment of Aldridge is capable of being used in the method of claims 5 and 13, since the structural limitations of the garment used in the method are provided by Aldridge and therefore it is capable of being used in the method as described.

Art Unit: 3765

However, Aldridge fails to teach the shell of low visibility displays camouflage.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the shell of low visibility displaying camouflage because Applicant has not disclosed that the shell of low visibility displaying camouflage provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the shell of low visibility being camouflage or any other color because as long as it appears dark or black in ambient light any color or pattern would comply.

In regard to claim 6, Aldridge teaches the shell of low visibility does not have reflective trim or any reflective or fluorescent portions (inside of 14). The shells conform to national fire protection association standards for outer shells of protective garment for firefighters (column 1, lines 32-42).

In regard to claims 7, 8, 15 and 16, Aldridge fails to teach the shells being similar in basis weights or equal in basis weights.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the shells being similar or equal in basis weights because Applicant has not disclosed that the shells being similar or equal in basis weights provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the shells being equal, similar or different in basis weights because as long as there is one shell of high

Art Unit: 3765

visibility and one shell of low visibility the weight of each is not structurally critical.

Therefore, it would have been an obvious matter of design choice to modify Aldridge to obtain the invention as specified in claims 7, 8, 15 and 16.

In regard to claim 9, Aldridge provides a coat garment (10) for protecting a military or paramilitary firefighter or emergency worker that comprises a shell that is capable of being reversed from a shell of high visibility (16) to a shell of low visibility (inside of 14). The garment is capable of being worn with either shell facing outwards. The shell of high visibility (16) has portions that are reflective (30) and face outwardly when the protective garment is worn so that the shell of high visibility faces outwardly.

The garment of US 6,728,970 is capable of being worn in a tactical situation in which a need for low visibility overrides a need for high visibility develops or is expected to develop. The military or paramilitary firefighter or emergency worker wearing the protective garment with the shell of high visibility facing outwardly may have an opportunity to doff the protective garment, to reverse the protective garment, and to re-don the protective garment with the shell of low visibility facing outwardly.

In regard to claim 10, Aldridge teaches the shell of high visibility having reflective trim affixed thereto (30).

In regard to claim 14, Aldridge teaches the shell of low visibility does not have reflective trim or any reflective or fluorescent portion (see inside of 14). The shells conform to nation fire protection Association standards for outer shell of protective garments for firefighters (column 1, lines 32-42).

Response to Arguments

6. Applicant's arguments filed 10/27/04 have been fully considered but they are not persuasive. Examiner has rebutted to the Applicant's arguments below.

I) Applicant has argued that claims 6-8 and 14-16 rejected under 35 U.S.C. 112 second paragraph should be reconsidered since "*NFPA standards are understood by a person having ordinary skill in the art*" and that "*similar references are made in the claims of US patent 6,728,970*".

Examiner disagrees since, while the NFPA standards might be understood today they have in the past been different and will continue to change throughout future years. With future technology and experimentation the NFPA Standards today will be different in years to come. How would one interpreting the application have any reference to what the NFPA standards are used to construct the Applicant's invention without any definition as to what those standards are in the disclosure. The NFPA standards need to be defined in the specification so one can fully understand the instant invention. The references made in claims of US patent 6,728,970 are not proper and appear to be in error.

II) Applicant argues that the garment of Aldridge is not reversible "*because the collar, the slide fastener or other closure means and the storm flap would become inoperative*".

Examiner disagrees since, any garment is capable of being worn in the reversed position. There is nothing that prevents the garment of Aldridge from being worn with the inner side of the liner as the outer surface in the reversed position. The fact that the

Art Unit: 3765

collar, slide fastener, flap and other closure means would not operate properly has no effect on reversing the garment. The collar, flap and closure means do not have to lie in a certain positioned facing a certain way for the coat to be adorned on the wearer in the reversed position. There are no limitations in the claims about the collar, flaps and/or closures in the reversed position. Therefore, Aldridge meets the limitations of claims 1-16.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

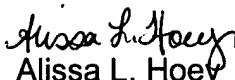
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

Art Unit: 3765

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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